COMPETING PROVIDERS ARE SUCCESSFULLY PROVIDING HIGH-CAPACITY SERVICES TO CUSTOMERS WITHOUT USING UNBUNDLED ELEMENTS

Introduction and Summary

In response to reports that the Commission is considering interim and permanent rules to replace the unbundling requirements that were vacated when the D.C. Circuit issued its mandate in *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), Verizon previously submitted market-specific information, including detailed maps, that is directly responsive to the Court's decision. This White Paper supplements that previous filing with additional detail and supporting evidence. Taken together, these two filings demonstrate that wherever there is demand for high-capacity services, competing providers can and are serving customers without unbundled elements. In particular, the evidence provided here focuses on the market facts the Court required the Commission to consider in making an impairment evaluation for these services.

For example, the Court held that the Commission must "consider the availability of tariffed ILEC special access services when determining whether would-be entrants are impaired." *USTA II*, 359 F.3d at 577. Competing carriers have been successful in serving both large and small customers using not only their own and other competing providers' facilities, but also special access service purchased from Verizon. As illustrated for the twenty metropolitan statistical areas ("MSAs") with the highest concentration of demand for Verizon's high-capacity services, competing carriers are using special access to serve customers throughout Verizon's serving areas. Indeed, 93 percent of DS-1 loops that carriers purchase from Verizon, which they then use to serve their own customers, are sold as special access (as opposed to as unbundled elements).

Of course, competing carriers do not merely rely on ILEC special access, they also have built extensive competitive facilities wherever there are significant pockets of demand for high-capacity services. The demand for such services is highly concentrated. For example, 80 percent of the demand for Verizon's high-capacity special access services is concentrated in fewer than 8 percent of its wire centers. In those highly concentrated areas, competing carriers can and have built their own networks. There are an average of 20 such networks in each of the top 50 MSAs. In the maps that Verizon has previously provided, Verizon identifies the known places where competing carriers have deployed their own networks, and, to the extent such information is available to Verizon, where competing carriers have lit commercial buildings to serve them with competing fiber. These maps clearly illustrate that where there are concentrations of demand, there are concentrations of competitively supplied fiber.

The result of all of this is that competing providers are competing successfully to provide high-capacity services to business customers of all shapes and sizes. At the top end of the market, competing carriers, and in particular the large traditional long distance carriers, have dominated the provision of high-capacity services to large enterprise customers who make up the bulk of retail demand for those services — for Verizon, more than 85 percent of its sales to end-user business customers. AT&T, MCI, and Sprint account for nearly half of all revenues generated from larger enterprise customers and these three carriers are the primary telecommunications provider to nearly three quarters of large corporate accounts.

But competing carriers also are successfully providing high-capacity services to small business customers wherever demand exists. Competing carriers purchasing special access from Verizon are in fact using it to serve a wide spectrum of small businesses that includes antique dealers, book stores, dry cleaners, florists, gas stations, and hair dressers, to name just a few.

Moreover, where competitive fiber has been deployed to a building, a competing carrier can serve small businesses in those buildings just as easily as it can serve larger businesses.

Because alternative providers are competing where there is demand, and are successfully serving customers without the need for unbundled elements, the question whether competing carriers are impaired without access to UNEs — which requires a determination of whether high-capacity services are "suitable for competitive supply" — must be answered in the negative. *USTA II*, 359 F.2d at 571. Where competing carriers already are successfully providing high-capacity services using a combination of their own facilities and special access, there is no impairment and unbundling cannot be required. The evidence presented here — and in the attached declarations and tables and previously provided maps — provides the evidentiary basis the Commission needs to evaluate impairment as required by the Act. Based on this record, the Commission may not require unbundling of high-capacity loops or dedicated transport, including dark fiber loops.

This is true both for high-capacity facilities in general, and, as discussed below, it also is true for the several classes of high-capacity customers, services, and facilities for which competition is especially intense — large enterprise customers, wireless and long-distance carriers, EELs, packet-switched services, and entrance facilities. Moreover, the Commission must follow this approach both with respect to the formulation of new permanent rules, as well as with respect to any interim rules that it may adopt.

I. Background

In the *Triennial Review Order*, the Commission made four key determinations in imposing unbundling obligations for virtually all high-capacity facilities, including high-capacity loops, dedicated transport, and dark fiber. First, the *Order* defined the relevant geographic market for both high-capacity loops and dedicated transport as each unique, individual, point-to-point route. *See Triennial Review Order*, 18 FCC Rcd 16978, ¶¶ 307, 335, 360, 410 (2003). Second, the *Order* established "triggers" for eliminating unbundling obligations where there are multiple competitive providers on a given route, and delegated to the states the responsibility for determining the routes on which the triggers are met (and where carriers, therefore, are not impaired). *See id.* ¶¶ 330, 339, 400, 417. Third, the *Order* recognized that there are other instances where a "customer location *could* be economically served by competitive carriers" and competitors therefore are not impaired, even where the triggers are not met. *See id.* ¶¶ 335, 410 (emphasis added). The *Order* also delegated to the states the responsibility of determining where that is the case. Fourth, the *Order* refused to consider evidence that competitors are successfully providing high-capacity services using special access purchased from incumbents. *See, e.g., id.* ¶ 102.

In *USTA II*, the D.C. Circuit vacated the rules requiring unbundling of high-capacity facilities, defined as any "transmission facilities dedicated to a single customer or a carrier" and, thus, to include both dedicated transport and high-capacity loops. 359 F.3d at 573. The Court reached four key conclusions that are relevant to high-capacity facilities. First, the Court criticized the *Order*'s decision to define individual routes as unique markets, requiring instead "a sensible definition of the markets in which deployment" occurs and that the Commission consider "facilities deployment along similar routes when assessing impairment." *Id.* at 574,

575. The impairment determination, the Court held, must consider "similarly situated" routes to where high-capacity facilities are deployed, and the presence of actual "competition on one route" is evidence that must be considered "when assessing impairment" on other routes. *Id.* at 575.

Second, the Court reaffirmed that the critical inquiry is whether CLECs are *capable* of competing without UNEs — that is, whether "competition is possible" without UNEs in a particular market regardless of whether one or more CLECs is already competing in that market. *Id.*; *see USTA v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002) ("*USTA I*"). The statute's focus on the "ability" of a carrier to compete makes clear that actual competition by a particular carrier is not the test. 47 U.S.C. § 251(d)(2). Thus, evidence that even a single competitor has deployed high-capacity facilities in a market shows that competition is *possible* in that market.

Third, the Court invalidated the Commission's decision to delegate impairment determinations to state commissions and, therefore, vacated *all* "portions of the Order that delegate to state commissions the authority to determine whether CLECs are impaired without access to network elements." *USTA II*, 359 F.3d at 568. The D.C. Circuit thus made clear, as the Supreme Court had done before, that impairment determinations must be made by the Commission itself. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 391-92 (1999).

Fourth, the Court held that the Commission "must consider the availability of tariffed ILEC special access services when determining whether would-be entrants are impaired." *USTA II*, 359 F.3d at 577. As the Court explained, where "competitors have access to necessary inputs at rates that allow competition not only to survive but to flourish, it is hard to see any need for the Commission to impose the costs of mandatory unbundling." *Id.* at 576. As the Supreme Court made clear in *Iowa Utilities Board*, the impairment standard is not satisfied simply

because unbundled access would permit competitors to reduce their costs and earn higher profits. *See* 525 U.S. at 390.

II. High-Capacity Services Are Uniquely Suited to Competitive Supply

In order to formulate "a sensible definition" of the high-capacity market, it is necessary to begin with the recognition that this market is characterized by a number of demand- and supply-side characteristics that make high-capacity services uniquely suited to competitive supply.

As an initial matter, the demand for high-capacity services is highly concentrated geographically, which as the Commission has recognized provides greater opportunities for competitors. *See Triennial Review Order* ¶¶ 205, 375. As shown in Attachment 5, more than *80 percent* of the demand for high-capacity special access services in Verizon's region is concentrated in fewer than *8 percent* of its wire centers (or 532 out of 6,900 total). These wire centers, in turn, are highly concentrated in the largest metropolitan areas — more than *three-quarters* of the 532 wire centers where demand is concentrated are located in only the 20 MSAs in Verizon's serving area with the largest amount of high-capacity demand. Moreover, within each of those wire centers, demand is further concentrated in large office buildings and business parks. *See id.* ¶ 298.

Demand for high-capacity services also is concentrated among those customers that generate both the relatively high volumes of traffic that warrant use of dedicated, high-capacity facilities and the correspondingly high revenues. *See WorldCom, Inc. v. FCC*, 238 F.3d 449, 453 (D.C. Cir. 2001) ("Most users of special access services are companies with high call volumes."). Users of high-capacity services, therefore, are an attractive customer segment that has been heavily targeted by competing providers when they enter a new market area. *See also Triennial Review Order* ¶ 303. As shown in Attachment 6, because demand is concentrated most heavily in the larger MSAs, the size of an MSA is strongly correlated with the number of CLEC

networks in that MSA. And Attachment 7, discussed in more detail below, shows that competitors with fiber networks target the specific buildings where that demand is concentrated.

Finally, once a competitor decides to offer high-capacity services in a particular market area, it can provide such services *throughout* that area, wherever demand exists. As discussed further below, competing carriers can provide high-capacity services using competitive facilities or special access services purchased from the incumbent (either exclusively or in combination). This means that once a competing carrier enters the market it can immediately decide to serve the entire market, which further increases its ability to achieve economies of scale. Verizon has developed and filed maps for the 20 MSAs in Verizon's territory in which special access demand is most heavily concentrated, which demonstrate that this is precisely what competing carriers are now doing. Verizon provided these maps in an *ex parte* submission on June 24, 2004, and incorporates them here by reference.[1]

The summary map for each MSA, in each case labeled Map A, plots specific locations where competing carriers are providing high-capacity services to customers using either special access or alternative fiber facilities in those 20 MSAs. Although the locations served by only a subset of all competing carriers are shown on the maps, they nonetheless show that competitors are providing high-capacity services throughout these MSAs — primarily in the downtown areas, where demand is most highly concentrated, but also in more far-flung areas, to the extent

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[1] *See Ex Parte* Letter from Dee May, Verizon, to Marlene Dortch, FCC, CC Docket Nos. 01-338, 96-98, and 98-147 (June 24, 2004) (attaching presentation entitled "Competing Providers Are Successfully Providing High-Capacity Services to Customers Without Using Unbundled Elements" and attaching maps as Attachments 5A through 5T to the presentation.). Those maps are organized by MSA. For each MSA there are six maps, referred to here as Maps A through Maps F. The attached Declaration of Judy Verses, Ronald Lataille, Marion Jordan and Lynelle Reney ("Verses/Lataille/Jordan/Reney Decl.") details the source data used to compile the maps. *See* Verses/Lataille/Jordan/Reney Decl. ¶¶ 9-30, 45-48 (Attachment 1).

demand also exists in those locations. The summary maps further show that competitors are doing so using *both* alternative facilities (the purple squares on the map) and Verizon's special access (the red triangles on the map).

Verizon's own experience as a competing carrier outside its region is consistent with this. When Verizon decides to enter a new out-of-region market, it begins by obtaining information from selected competing carriers about the availability and price of competitive local access facilities. *See* Declaration of Claudia Cuddy ("Cuddy Decl.") ¶¶ 2-10 (Attachment 2). Based on the information it receives and facilities it is able to obtain, Verizon establishes points of presence in certain markets and then begins offering high-capacity voice and data services to customers using a combination of its own facilities, non-ILEC fiber facilities obtained through commercial arrangements, and ILEC special access. *See id.* ¶¶ 10-13. Competing in this manner, Verizon has targeted 30 out-of-franchise markets, and has already won the business of approximately 500 customers in six out-of-region states. *See id.* ¶¶ 3, 13. Verizon's success accordingly provides additional evidence that competition in the provision of high-capacity services is possible without access to high-capacity UNEs.

III. Competition for High-Capacity Facilities and Services

Under the analytical framework the Commission is bound to apply, the evidence demonstrates that competing providers are capable of successfully providing high-capacity services to business customers *without using unbundled elements*. Indeed, competing providers are competing successfully using a combination of their own or other alternative facilities and special access services purchased from incumbent LECs. The evidence shows that competing providers are using these alternatives to UNEs to provide high-capacity services to customers of all shapes and sizes, in both large and small markets across the country. Competing providers

have in fact been so successful that they now lead in the head-to-head competition for a number of the most significant categories of high-capacity services and customers.

A. Competitors Are Capable of and Are Using Alternative High-Capacity Transport Facilities.

The evidence shows that competing providers have deployed extensive fiber facilities throughout major metropolitan areas and business parks focusing on the areas where demand for high-capacity services is concentrated, and that these providers are capable of and are using those facilities to provide transport services.

The Commission has previously acknowledged that competing providers "have deployed significant amounts of fiber transport facilities to serve local markets." *Triennial Review Order* ¶ 370; *see also id.* ¶ 398. According to New Paradigm Resources Group's *2004 CLEC Report* — a source on which the CLECs' own trade association relies for competitive fiber data — competing providers have now deployed at least one network in at least 98 of the top 100 MSAs, and an average of roughly 20 networks in each of the top 50 MSAs. *See* Attachment 8. Competing carriers themselves report that these networks consist of more than 180,000 route miles of fiber. For example, AT&T operates 20,600 route miles of local fiber and Time Warner Telecom operates 11,345 route miles of local fiber. Attachment 9 provides fiber route-mile totals for 23 additional competing providers.

Data regarding the markets served by Verizon confirm that competing providers have deployed fiber networks wherever high-capacity demand is concentrated and that these networks are capable of and are being used to provide transport services. Verizon has compiled information from two highly reliable sources of data, as described in the attached Declaration of Judy Verses, Ronald Lataille, Marion Jordan and Lynelle Reney. *First*, Verizon performed physical inspections of selected central offices with high demand levels for high-capacity

services to identify those in which competing providers have obtained fiber-based collocation. *See* Verses/Lataille/Jordan/Reney Decl. ¶¶ 9-14. Verizon's physical inspections reveal that there is competitive fiber in more than three quarters of the offices in those MSAs that are among those that account for 80 percent of the demand for high-capacity special access services in Verizon's region. The percentage of wire centers with competitive fiber in those MSAs may in fact be higher, however, because Verizon did not inspect every office within those MSAs. *See id.* ¶¶ 8-12. The Commission has previously endorsed fiber-based collocation as a means to evaluate the presence of competitive transport, *see Pricing Flexibility Order*, 14 FCC Rcd 14221, ¶ 81 (1999), and the D.C. Circuit has upheld that determination, *see WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). Both the Commission and the Court have also recognized, however, that fiber-based collocation undoubtedly *understates* the true scope of competitive fiber transport, because it "fails to account for the presence of competitors that . . . have wholly bypassed incumbent LEC facilities." *WorldCom*, 238 F.3d. at 462 (quoting *Pricing Flexibility Order* ¶ 95).

Second, Verizon obtained third-party data on *known* competitive fiber routes from GeoTel — an outside consultant that is a leading provider of information related to telecommunications geography. *See id.* ¶ 15. GeoTel maintains data on the fiber networks of approximately 85 carriers in more than 100 MSAs — much of which is derived from the carriers themselves. *See id.* Competing providers and incumbent local exchange carriers alike use this data for marketing purposes and/or to determine the availability of telecommunications services, including high-capacity transport, in a given market. *See id.* ¶ 16. Again, however, although GeoTel's data are highly reliable, they likely understate the extent of competitive fiber deployment, because GeoTel does not always obtain information about new fiber deployment as

soon as it occurs and does not always have data for all competing providers that have deployed fiber in a given area. *See id.* ¶ 17.

The data from these two sources are presented in Maps B, C, D, and E. Maps B provide a high-level view of the known competitive fiber that has been deployed in each of Verizon's 20 MSAs with the highest concentration of demand for high-capacity services. These maps plot three types of data in each MSA: the central offices that account for 80 percent of demand for high-capacity services in Verizon's region; the subset of those central offices in which competing providers have deployed known fiber; and the known fiber routes of competitive providers. These maps show that there is a strong correlation between the presence of competitive fiber and the offices in which demand for high-capacity services is concentrated. In particular, competing providers have obtained fiber-based collocation in an overwhelming majority of the central offices that are among those that account for 80 percent of Verizon's demand for high-capacity services, and the known fiber routes these providers have deployed are concentrated in these same wire centers.

Maps C show, for each of the 20 MSAs, the transport routes between wire center service areas where known competitive fiber is present. This does not mean to suggest there is fiber directly between each of these wire centers, but it does show where, in the Court's word, it is "possible" to establish connections between wire centers. This is so because when competitive fiber is present in a given wire center, it almost always connects to the CLEC's own fiber network, or the fiber network of another competing provider, and can therefore be used to reach any other wire center that also is reached by those competitive networks. *See, e.g., Triennial Review Order* ¶ 361 ("Competing carriers generally use interoffice transport as a means to aggregate end-user traffic . . . by using dedicated transport to carry traffic from their end users'

loops, often terminating at incumbent LEC central offices, through other central offices to a point of aggregation."); *id.* ¶ 370.

The Commission also has recognized that when competing carriers provide transport between two or more wire centers, they do not necessarily connect those offices directly, but may also do so *indirectly* — for example, by using their own network or another carrier's network as an intermediary point. *See, e.g., Triennial Review Order* ¶ 401 (competitive transport "do[es] not have to mirror the network path of the incumbent LEC," but may instead use more efficient arrangements, including routing traffic through the CLEC's "intermediate" facilities); 47 C.F.R. § 51.319(e) ("A [dedicated transport] route between two points (*e.g.*, wire center or switch 'A' and wire center or switch 'Z') may pass through one or more intermediate wire centers or switches (*e.g.*, wire center or switch 'X').").

Maps D and E reflect the known fiber routes in the metropolitan and downtown portions of Verizon's top 20 MSAs. The fiber routes shown in these maps provide further confirmation that there is a high correlation between competitive fiber deployment and the areas where high-capacity demand is concentrated. Here, too, however, while the information on known fiber routes is reliable, it is not necessarily complete and may not include all competitively deployed fiber. *See* Verses/Lataille/Jordan/Reney Decl. ¶ 17.

B. Competitors Are Capable of and Are Using Alternative High-Capacity Loop Facilities.

The extensive fiber networks that competing providers have deployed also are capable of and are being used to provide high-capacity loops to buildings in which there is concentrated demand for high-capacity services.

The Commission has recognized that "competitive LECs have deployed fiber that enables them to reach customers entirely over their own loop facilities," and that they have "built fiber

loops to buildings that carry a significant portion of the competitive traffic in certain MSAs." *Triennial Review Order* ¶ 298; *see also id.* ¶ 315. According to competing providers themselves, competitive fiber now provides connections to tens of thousands of office buildings. Attachment 9 provides the on-net buildings for the 16 CLECs for which such data are available. One of those CLECs — Time Warner Telecom — claims that, in some markets, its fiber network alone may connect to *more* buildings than BOC fiber. *See* E. Gubbins, *A Conversation with Time Warner Telecom's Mike Rouleau*, Telephony Online (Oct. 29, 2003) ("While [RBOCs] have lot[s] of fiber deployed, I don't know that they have more buildings connected than we do in all cases. In certain markets they may; in others they may not.").

Verizon has compiled information demonstrating that competing providers in Verizon's top-20 MSAs have connected their fiber to buildings where high-capacity demand is concentrated, just as these providers have done in markets throughout the country. Verizon has again obtained two sources of data that prove this, which are described in the Declaration of Judy Verses, Ronald Lataille, Marion Jordan and Lynelle Reney.

First, Verizon obtained third-party data identifying the office buildings that competing carriers are serving with fiber facilities. Verizon obtained the locations of these "lit" buildings from two sources that are generally relied upon in the industry: Universal Access, an independent broker of high-capacity services for telecommunications service providers and end-user customers, and GeoResults, Inc., an industry consultant to telecommunications equipment vendors and service providers. *See* Verses/Lataille/Jordan/Reney Decl. ¶¶ 19-30. GeoResults used Telcordia's industry-standard Common Language database to identify buildings in which CLECs have deployed fiber-enabled network equipment, which is an indicator that the CLEC is using fiber to serve customers in that building. *See id.* ¶¶ 20-23. As a broker of high-capacity

services, Universal Access maintains an extensive database on the availability of high-capacity facilities that is generally relied on in the industry, including the footprints of competitive fiber networks and the buildings served by those networks. *See id.* ¶¶ 27-29.

These data are presented in Maps A, D, and E. These maps identify the buildings that competing providers are serving with fiber facilities in each of Verizon's top-20 MSAs (identified on the maps as "CLEC-lit" buildings). Maps A provide these data from a bird's-eye view of the entire MSA; Maps D show the same data for the metropolitan portions of those MSAs; and Maps E show these data for the downtown areas in these MSAs. Each of these sets of maps shows that competing providers are using fiber to connect directly to office buildings throughout the markets in which they have deployed fiber, and that there are in fact hundreds of individual buildings already connected to CLEC fiber networks, with the heaviest concentration in the areas where there is the most significant demand for high-capacity services.

Second, Verizon obtained data that estimate the typical aggregate demand for high-capacity services in buildings served by competitive fiber. Verizon obtained this data from InfoUSA (formerly known as American Business Information or ABI) a leading provider of sales and marketing information to many different types of businesses. *See id.* ¶¶ 32-33. InfoUSA maintains a database on approximately 13 million businesses in the United States. *See id.* ¶ 33. Verizon obtained information regarding the size, nature, and address of the businesses in the 20 MSAs that Verizon evaluated. *See id.* ¶ 34. Using an industry model developed by Global Insight Inc. — a firm that provides a range of consulting and information services for many different industries — Verizon was able to use this information to estimate and correlate telecommunications demand with each individual building address in these 20 MSAs. *See id.* ¶¶ 37-42.

Attachment 10 contains a summary of this data. It is a chart demonstrating that competing providers have deployed fiber to the majority of buildings with high estimated telecommunications expenditures, including: 65 percent of buildings with greater than $6 million in aggregate telecommunications expenditures; 57 percent of the buildings with $4-$6 million in aggregate telecommunications expenditures; and 50 percent of the buildings with $2-$4 million in aggregate telecommunications expenditures. These data accordingly confirm that competing providers have chosen to target buildings where high-capacity demand is concentrated.

Finally, the data on competitive *fiber* do not provide the full extent to which alternative loop facilities are available, because fiber is not the only technology that competing carriers can use to provide high-capacity loop services. Both fixed wireless and cable networks provide additional competition in the supply of high-capacity loops.

Analysts report that 40 percent of large business (5,000+ employees), 29 percent of mid-sized businesses (500-5,000 employees), and 23 percent of small businesses (5-99 employees) are now using fixed wireless services for at least some high-capacity services. K. Burney, *et al.*, In-Stat/MDR, *Cash Cows Say "Bye-Bye": The Future of Private Line Services in US Businesses* at 19, Tables 9 & 10 (Dec. 2003) ("*In-Stat/MDR December 2003 Study*"). Competing providers may use fixed wireless to extend their existing fiber networks, and a number of wireline CLECs are now doing so, while other CLECs are currently experimenting with the technology. For example, on May 4, 2004, WilTel announced that it would use fixed wireless from Teligent to expand its networks in Tier 2 and Tier 3 markets to give customers "direct, on-net access to WilTel's robust services." WilTel Press Release, *Teligent to Provide Wireless Service Installation, Management* (May 17, 2004). Another CLEC, XO, is "rolling out its fixed wireless services directly and through other carriers that would resell it to end users." K. Henderson,

Fixed Wireless Round Two: Metro Wholesalers Step Back in the RF Ring, Phone+ (Feb. 2004), http://www.phoneplusmag.com/articles/421carrier01.html (quoting Mark Salter, VP, broadband wireless, XO). As Attachment 11 shows, other CLECs are using fixed wireless as well. Some of them — such as XO — already own their own fixed wireless spectrum. *See* XO, *Network Assets*, http://www.xo.com/about/ourstory/networkassets.html (XO owns "[f]ixed wireless licenses covering 95% of the top U.S. business markets."). As Attachment 12 shows, however, wireline CLECs also may obtain fixed wireless services from a number of third-party suppliers.

Each of the nation's major cable operators also is now actively pursuing large business customers. As Attachment 13 shows, these cable operators are providing high-capacity services to business customers both by deploying fiber to office buildings, and by extending their hybrid fiber-coax networks to business districts in order to provide cable modem services to business customers. For example, Time Warner is "delivering cost effective, high capacity access solutions to several Fortune 500 customers," while Cox has "launched . . . a new integrated marketing campaign to inform and drive demand among Enterprise and Fortune 500 companies." Time Warner Cable Commercial Services, *High Speed Internet Access*, http://www.twcbroadband.com/products/hsd.php; Cox Business Services Press Release, *Enterprise Presents Even 'Bigger' Opportunity for Cox Business Services in 2004* (Mar. 29, 2004). Charter cable is "[m]oving "'up-market' to compete in Enterprise RFP environment." D. Chang, EVP, Finance & Strategy, Charter Communications, presentation before the JP Morgan High Yield Conference (Feb. 2, 2004). According to analysts, 41 percent of large businesses, 32 percent of mid-sized businesses, and 44 percent of small businesses were using cable modem service for at least some high-capacity services. *See In-Stat/MDR December 2003 Study* at 19, Tables 9 & 10.

C. *Competitors Are Capable of and Are Using Special Access To Compete Successfully.*

Although competing providers are relying heavily on their own or alternative facilities to provide high-capacity services, they also are extending the reach of those facilities by using special access services purchased from incumbent local exchange carriers. Competing providers are in fact using special access to serve customers of all shapes and sizes, and in all geographic markets, which demonstrates that special access is a viable alternative for competing providers wherever there is demand for high-capacity services.

According to the most recent data available, more than 80 percent of Verizon's total special access revenues are generated from sales to other carriers, which then use the special access circuits to provide service to their own retail customers. *See* Verses/Lataille/Jordan/Reney Decl. ¶ 49. Competing carriers are using special access services in three main respects: to extend the reach of their own fiber networks or those of other alternative providers they may be using; to compete entirely through a resale mode, by reselling special access services directly to end users; or to transport switched traffic that is consolidated from many smaller customers. Some carriers are in fact using special access services exclusively (rather than UNEs) to reach their customers, or have stated that special access is all they need from ILECs. For example, Time Warner — one of the most successful competing providers in the country — recently announced that it "does not rely upon UNEs," because it earns the "majority of our revenue . . . exclusively through our own network facilities," and "instances where we need services from ILECs to connect our remote customers to our vast fiber network, we purchase those under special access tariffs or under agreements with the ILECs." Time Warner Telecom Press Release, *Time Warner Telecom Not Impacted by UNE Ruling* (June 10, 2004) (quoting Paul Jones, SVP, general counsel and regulatory policy, Time Warner Telecom).

Given that Verizon provides special access services to other carriers, it maintains comprehensive records of where it is providing that service, and to which end-user locations. In each of the 20 MSAs it studied, Verizon reviewed the billing records of a sample of carriers that included the two largest and three to six smaller competing providers that purchase high-capacity special access services from Verizon to identify the type of service they obtained, the location at which it was being used, and the identity of the customer that was being served. *See* Verses/Lataille/Jordan/Reney Decl. ¶¶ 46-48. These data show that competing providers are using special access services purchased from Verizon to serve customers of all types and sizes, and in all geographic areas where there is high-capacity demand, which demonstrates that special access is a viable alternative for competing providers everywhere.

Maps F show the locations where these representative carriers are using Verizon special access to serve customers in the metropolitan areas of each of Verizon's top 20 MSAs. Maps E provide a more detailed view of these data, focusing on the downtown areas of the top 20 MSAs. Both sets of maps also overlay the locations where competing carriers are purchasing special access with the locations of the buildings that competing providers are serving with fiber. These maps demonstrate that competing providers are using Verizon special access to serve customers in areas of high concentration, where competitive facilities already exist, as well as in areas where demand is less concentrated and competitive facilities have not yet been deployed.

Attachment 14 is a list of the types of customers that the sample competitors are serving using special access services purchased from Verizon. The list shows that competing providers are using special access to serve not only large enterprises, but also small businesses such as antique dealers, book stores, dry cleaners, florists, gas stations, and hair dressers, to name a few.

These data therefore demonstrate that special access is a viable competitive alternative for all kinds of customers with demand for high-capacity services.

Verizon's data also show that competing carriers are using high-capacity special access services much more extensively than UNEs. Of the high-capacity loops that competing carriers purchase from Verizon, nearly 93 percent of the DS-1 loops and more than 98 percent of the DS-3 loops are purchased as special access service. *See* Verses/Lataille/Jordan/Reney Decl. ¶¶ 50-51. Put another way, only 7 percent of the DS-1 loops and less than 2 percent of the DS-3 loops are purchased as UNEs. *See id.* Verizon's data also show 95 percent of the DS-1 loop and transport combinations that competing carriers purchase from Verizon are purchased as special access rather than as UNEs. *See id.* ¶ 54. These data are fully consistent with what competing carriers themselves have previously claimed about their use of special access. *See, e.g.*, AT&T, *Transport UNEs Are a Prerequisite for the Development of Facilities-Based Local Competition* at 10 (Oct. 7, 2002), *attached to* Ex Parte Letter from Joan Marsh, AT&T, to Marlene Dortch, FCC, CC Docket Nos. 01-338, *et al.* (Oct. 8, 2002) ("98% of AT&T's DS1 customer loops/EELs are leased from ILECs under their Special Access tariffs; only 2 percent are leased as UNEs").

CLECs have been successfully competing for all kinds of customers using special access by purchasing these special access services at deep discounts off the tariffed "base" rates for these services. Verizon offers significant discounts off of those base rates — on the order of 5 to 40 percent — to customers that enter into term commitments (ranging from 1 to 7 years, depending on the service and geographic area). *See* Verses/Lataille/Jordan/Reney Decl. ¶ 56. Verizon's data show that competing carriers are availing themselves of these discounted rates. On the whole, wholesale customers are purchasing special access services from Verizon at an average of approximately 35 to 40 percent off the base rates for these services. *See id.*

D. The Relevant Geographic Market Must Be No Smaller than an MSA

As discussed above, competing carriers are providing service *throughout* the MSAs in which they are competing, primarily in the downtown areas, where demand is most highly concentrated, but also in more far-flung areas, to the extent demand also exists in those locations. The evidence also shows that competitors are doing so using *both* alternative facilities and Verizon's special access. Verizon's maps show that this is occurring in each of the 20 MSAs in Verizon's territory in which special access demand is most heavily concentrated.

In light of this evidence, there is no basis on which to define the relevant geographic market for high-capacity loops and transport as each individual point-to-point route. *USTA II* requires that the Commission determine the appropriate market and that it must adopt "a sensible definition of the markets in which deployment" occurs, *USTA II*, 359 F.3d at 574. At a minimum, this is an entire MSA, given that competing carriers are providing service throughout the MSAs they have entered. The fact that competing carriers may not have deployed facilities on every single route within these MSAs is irrelevant, both because the Commission "must consider the availability of tariffed ILEC special access services," *id.* at 577, and also because it must consider "facilities deployment along similar routes when assessing impairment." *Id.* at 575. And the evidence here demonstrates that when both of these factors are taken into account, competing carriers have been able to able to provide high-capacity services throughout entire MSAs, wherever demand for those services exists.

Moreover, evidence demonstrates that there is no basis for an impairment finding in the 20 MSAs served by Verizon that have the largest demand for high-capacity services. Under no conditions could an unbundling rule be imposed in these areas either on an interim or permanent basis.

E. There Are Several Classes of High-Capacity Customers, Services, and Facilities For Which Competition Is Particularly Intense.

In addition to the fact that there is extensive competition in the provision of high-capacity loops and transport generally, there also are several classes of high-capacity customers, services, and facilities for which competition is particularly intense, and for which there also can be no finding of impairment.

By way of background, in *USTA II*, the D.C. Circuit reaffirmed its previous holding that the impairment inquiry must take a "nuanced" approach that analyzes whether competition is impaired in "specific markets or market categories." 359 F.3d at 574 (citing *USTA I*, 290 F.3d at 426). Accordingly, the Commission may not impose an unbundling obligation for a particular category of customers or services without first making an impairment finding with respect to that category. The D.C. Circuit has in fact twice affirmed the Commission's own conclusion that the standards in the Act are appropriately applied by "disaggregating the *impairment* issue, and in ordering unbundling only with respect to the *service* for which it found impairment." *Id.* at 592 (initial emphasis in original); *see also id.* ("service-by-service impairment analysis permissible") (citing *Competitive Telecommunications Ass'n v. FCC*, 309 F.3d 8, 12-13 (D.C. Cir. 2002)). By contrast, where the Commission has "failed to conduct the requisite impairment analysis," for specific categories of services or customers, the Court has reversed its determination. *Id.* at 575 (reversing unbundling requirements for use by providers of wireless service). The D.C. Circuit has squarely held that "competitors cannot generally be said to be impaired" in a particular market category or categories "where robust competition in the relevant market belies any suggestion that the lack of unbundling makes entry uneconomic." *Id.* at 592; *accord id.* at 576. And as demonstrated below, there are at least five specific categories of services or customers

where robust competition demonstrates that competing providers are not impaired without access to UNEs.

1. Large Enterprise Customers

Enterprise Customers Generally. Analysts typically define "large enterprise" customers as Fortune 1000 companies and large public institutions. *See, e.g.*, R. D. Lynch, *et al.*, Lehman Brothers, *Enterprise Telecom Services* at 3 (Nov. 11, 2003) ("*Lehman Enterprise Report*"); *see also* Declaration of Eric J. Bruno ¶ 3 ("Bruno Decl.") (Attachment 3). This is the most valuable segment of the telecom industry, representing $50 billion in annual revenues. *See Lehman Enterprise Report* at 3; Bruno Decl. ¶ 5. Large enterprise customers are major purchasers of high-capacity services. In Verizon's region, large enterprise customers account for more than 85 percent of total special access revenues purchased by end-user business customers. *See* Bruno Decl. ¶ 6.

Large enterprise customers often purchase most of their telecommunications services on a nationwide or global basis from a small number of primary service providers — in some cases, just one or two. *See id.* ¶ 8. Traditionally, local telephone companies have not been major players in this market segment, because they did not have the ability to meet all of the needs of these customers. In particular, the interLATA restriction historically precluded the Bell companies from providing interLATA services, which is a critical component of the package of services that large enterprise customers demand. The Bell companies have only recently begun to compete seriously for the nationwide and global business of large enterprise customers.

Notwithstanding the fact that Verizon and other ILECs have begun competing for large enterprise customers, competing providers continue to lead in the head-to-head competition for this customer segment. According to analysts, AT&T, MCI, and Sprint account for nearly half

of all revenues from large enterprise customers, *see Lehman Enterprise Report* at 15, and are the "primary" service provider for nearly three-quarters of large corporate accounts, A. Quinton, *et al.*, Merrill Lynch, *The Telecommunicator — WorldCom Survey Results — Industry Implications of Current Customer Thinking* at 2-3 (Feb. 6, 2003).

Moreover, competing carriers are serving large enterprise customers largely with their own facilities. AT&T tells investors that its own network "touches virtually all Fortune 1,000 Companies," and that its core network extends "all the way to the customer premises." David Dorman, Chairman and CEO, AT&T, presentation before the Credit Suisse First Boston Media and Telecom Week, at 6 (Dec. 11, 2003); AT&T News Release, *AT&T Introduces New Business Local Access Offer for Large Companies, Government Agencies* (Apr. 16, 2003). Royce Holland, the CEO of Allegiance, has stated that "[t]he large corporate enterprise market . . . is all but irrelevant in the debate over competition policy because *there are no bottleneck facilities*." *Allegiance CEO Urges Regulators to "Stay the Course" on Competition*, TR Daily (Dec. 4, 2003) (emphasis added). The Commission itself has found that large enterprise customers "provide a large incentive to suppliers to build their own facilities where possible, and carry these customers' traffic over their own networks." *Triennial Review Order* ¶ 129.

Packet-Switched Services. Just as competing providers dominate the provision of services to large enterprise customers generally, they are also the leading providers of high-speed packet-switched services that make up much of the demand of enterprise customers. *See* M. Bowen, *et al.*, Schwab SoundView Capital Markets, *AT&T Corp.* at 2 (Jan. 21, 2004) ("ATM and frame relay services constitute the majority of telecom spending by businesses."). Competing carriers do not need to purchase high-capacity transmission facilities as UNEs to provide high-speed packet-switched services, such as Frame Relay and ATM, but instead

provide these services by combining their own packet switching capabilities with high-capacity transmission facilities that either they supply themselves, obtain from an alternative supplier, or purchase as special access service from an incumbent LEC. *See, e.g.*, J. Hodulik, *et al.*, UBS, *Paying to Play: How Access Charges Determine Winners and Losers in Telecom Service* at 21 (Apr. 2, 2004) (explaining that IXCs "integrate[]" ILEC special access circuits into their "data service offering[s] for business customers"). AT&T, MCI, and Sprint control approximately *three quarters* of the market for Frame Relay and ATM services. *See id.* at 3. These three major carriers, along with a handful of other competitive carriers, are also the major providers of other specialized high-speed data services provided to business customers, such as IP Virtual Private Network ("IP-VPN") services. *See* H. Goldberg, In-Stat/MDR, *VPNs Take a New Look: Trends in the US IP VPN Services Market* at 16, Table 5 (Jan. 2004) (the five largest providers of IP-VPN service are AT&T, MCI, SAVVIS, Level 3, and Sprint; the only two BOCs in the Top 10 are Qwest and SBC, with a combined market share of only 3.4 percent).

2. Wireless and Long Distance

Wireless providers and long distance carries both use high-capacity services extensively to transport traffic within their networks, to connect their networks to other carriers, and in the case of long distance carriers to provide high-speed connections directly to large end users. Competition for both wireless and long distance services has thrived, even though providers of these services have not relied on UNEs.

Wireless. Prior to the *Triennial Review Order*, wireless carriers did not use UNEs at all, *see USTA II*, 359 F.3d at 575; they instead obtained transport facilities from alternative suppliers or purchased tariffed special access services from ILECs. *See, e.g.*, Comments of AT&T Wireless, *Notice, Request for Comments on Deployment of Broadband Networks and Advanced*

Telecommunications, NTIA Docket No. 011109273-1273-01 (NTIA filed Dec. 19, 2001) ("[W]ireless carriers expend significant sums to lease transport facilities from incumbent LEC special access tariffs."). The D.C. Circuit overturned the Commission's decision permitting wireless carriers to obtain UNEs for the first time for failing to undertake the requisite service-by-service impairment analysis. *See USTA II*, 359 F.3d at 575-577. The Court found that wireless carriers had not been impaired without access to UNEs in the past in light of the fact that there was a "rapidly expanding and prosperous market for wireless service." *Id.* at 576. The Court held that this evidence "clearly show[s] that wireless carriers' reliance on special access has not posed a barrier that makes entry uneconomic," and that there was accordingly no basis to find impairment. *Id.* at 575.

Since the Triennial Review, the use of wireless services has continued to expand.[2] The number of wireless subscribers has grown from 129 million to 157 million,[3] while wireless traffic has grown from 20 percent to 30 percent of all voice traffic.[4] Wireless also has grown

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[2] The growth of wireless services is addressed in greater detail in the other White Paper addressing competitive switching and accompanying support material that is part of this filing. *See Technological and Market Developments Since the Triennial Review Further Demonstrate that Competitors Are Not Impaired Without Access to Unbundled Mass Market Switching.*

[3] *Compare* Michael Balhoff, Managing Director, Telecommunications Group, Legg Mason, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee, Washington, DC (Feb. 4, 2004) (157 million wireless subscribers as of year-end 2003) *with Triennial Review Order* ¶ 53 (129 million wireless subscribers in mid-2002).

[4] Compare Eighth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 18 FCC Rcd 14783, ¶ 102 (2003) ("One analyst estimates that wireless has now displaced about 30 percent of total wireline minutes.") *with* L.F. Carvalho, Morgan Stanley, Dean Witter, Investext Rpt. No. 8285600, Wireless Services: Industry Outlook: Life After 50 — Industry Report at *5 (Nov. 28, 2001) (average of 339 monthly MOUs per wireless subscriber in 2001); *Triennial Review Order* ¶ 53 (129 million wireless subscribers in mid-2002); FCC, *Statistics of Communications Common Carriers* at

increasingly competitive with wireline, both for lines and minutes: the percentage of users giving up their landline phone has grown from 3-5 percent to 7-8 percent;[5] the number of wireless minutes has grown by 35-70 percent while wireline minutes have declined by 4-7 percent;[6] and wireless now accounts for approximately 43 percent of all long distance traffic.[7]

Long Distance. As the D.C. Circuit recognized, competing carriers have long provided long distance service successfully without access to EELs, *e.g.*, *USTA II*, 359 F.3d at 590, and there accordingly is "no evidence suggesting that [CLECs] are impaired with respect to the provision of long distance services," *id.* at 592. On the contrary, the Court emphasized that, in the context of long distance services in particular, "competitors cannot generally be said to be impaired by having to purchase special access services from ILECs, rather than leasing the necessary facilities at UNE rates, where robust competition in the relevant market belies any suggestion that the lack of unbundling makes entry uneconomic." *Id.*. The D.C. Circuit

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Table 5.8 (2001/2002 ed.) (4.4 trillion Dial Equipment Minutes; "two [dial equipment minutes] are counted for every conversation minute").

[5] *See Triennial Review Order* ¶ 445; *id.* ¶ 230; Adam Quinton, Managing Director & First VP, Co-Head, Global Telecom Services Research, Merrill Lynch, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee, Washington, DC (Feb. 4, 2004) ("an estimated 7% of telephone users only have a cell phone"); Michael Balhoff, Managing Director, Telecommunications Group, Legg Mason, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee, Washington, DC (Feb. 4, 2004) ("[W]hile it is clear that there is substitution whereby wireless-only customers may be 8% of the total consumer market today, it is admittedly difficult to calculate precise figures.").

[6] *See* D. Janazzo, *et al.*, Merrill Lynch, *The Next Generation VIII: The Final Frontier?* at 42, Table 33 (Mar. 15, 2004) (between year-end 2002 and year-end 2003, wireless minutes increased by 35 percent, while wireline minutes decreased by four percent; by year-end 2004, wireless minutes will have increased by 70 percent since year-end 2002, while wireline minutes will have decreased by seven percent during the same period).

[7] *See* Yankee Group News Release, *U.S. Consumer Long Distance Calling Is Increasingly Wireless, Says Yankee Group* (Mar. 23, 2004) (estimating that US households make 43 percent of their long-distance calls on wireless phones).

therefore noted that, on remand, it expected the Commission to "turn to the issue of impairment" specifically "with reference to long distance service," and anticipated that it "may well find none." *Id.*

Since the Triennial Review, competitors have continued to compete successfully in the long distance market without relying on UNEs, and there is no plausible argument that other carriers are entitled to UNEs for use to provide long distance services. Notwithstanding Bell Company entry into the market, AT&T, MCI, and Sprint provide 75 percent of the long-distance services sold to large business customers. *See* S. Flannery, *et al.*, Morgan Stanley, *Strong Showing for Bells in Annual Corporate Survey* at 32, Exh. 46 (June 22, 2004). In the consumer long distance market, prices are plummeting and packages of "unlimited" long distance service are becoming the norm.[8]

3. Enhanced Extended Links (EELs)

EELs are simply a combination of high-capacity loops and transport. Thus, EELs are not subject to unbundling for the same reasons as for high-capacity loops and transport generally. In particular, where there are alternative high-capacity loop and transport facilities available, competing providers can use these facilities as a substitute for EELs. Competing carriers also are

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[8] *See, e.g.*, J. Hodulik, *et al.*, UBS, *Sprint Announces Recombination: Putting It Back Together* at 5 (Mar. 1, 2004) ("Competitive pressures in the long distance market from traditional long distance operators and the Bells has resulted in sharp price declines and diminishing returns."); M. Rollings, *et al.*, Citigroup Smith Barney, *SBC Communications: Analyst Day Affirms Strategy to Trade N/T Margins to Improve L/T Prospects* at 3 (Nov. 13, 2003) ("LD is a commodity service on a stand-alone basis."); J. Bazinet, *et al.*, JP Morgan, *U.S. Telecommunications: The Art of War* at 83 (Nov. 7, 2003) (Consumer stand-alone long-distance voice is likely to "disappear over time as consumers move towards bundled services and long-distance voice becomes more of a vertical feature (often given for free) than a standalone business.").

capable of and are using special access as a substitute for EELs, and the Commission must consider this alternative in its impairment analysis.

The D.C. Circuit held that, with respect to EELs, just as with respect to specific services and markets, the "presence of robust competition in a market where CLECs use critical ILEC facilities by purchasing special access at wholesale rates . . . *precludes* a finding that the CLECs are 'impaired.'" *USTA II*, 359 F.3d at 593 (emphasis added). The Court found that where CLECs were competing successfully using special access services purchased from the ILECs, the Act "precludes" a finding that they would be impaired if they could not "convert" those circuits to UNEs. *Id.* The Court also recognized that it would create "anomalies" if CLECs that already were competing successfully using special access were "barred from access to EELs as unbundled elements," while other carriers entering the market would not be barred, and the Court therefore emphasized that "if history showed that lack of access to EELs had not impaired CLECs in the past, that would be evidence that similarly situated firms would be equally unimpaired going forward." *Id.*

Competing carriers' own conduct demonstrates that they are capable of providing (and are in fact providing) high-capacity services without access to EELs as UNEs, and the fact that special access may be priced higher than UNEs is irrelevant, because "the purpose of the Act is not to provide the widest possible unbundling, or to guarantee competitors access to ILEC network elements at the lowest price that government may lawfully mandate." 359 F.3d at 576. As the Supreme Court made clear in *Iowa Utilities Board*, the impairment standard is not satisfied simply because unbundled access would permit competitors to reduce their costs and earn higher profits. *See* 525 U.S. at 390.

First, as demonstrated above, competing carriers are extensively using special access to provide high-capacity services, and this includes loop-transport combinations that they purchase in the form of special access. Of the high-capacity circuits that competing carriers purchase from Verizon, nearly 93 percent of the DS-1 loops and more than 98 percent of the DS-3 loops are purchased as special access service, while only 7 percent of the DS-1 loops and less than 2 percent of the DS-3 loops are purchased as UNEs. *See* Verses/Lataille/Jordan/Reney Decl. ¶¶ 50-51. With respect to EELs specifically, 95 percent of DS-1 loop and transport combinations are purchased as special access rather than EELs. *See id.* ¶ 54.

Second, even those carriers who have purchased EELs first served customers for extended periods of time using special access before converting to EELs. One of Verizon's largest purchasers of special access services has waited an average of nearly 2 years, and in some cases more than 7 years, to convert its special access circuits to UNEs. *See id.* ¶ 55. A number of carriers that use special access services extensively have not converted any special access circuits to UNEs or have converted only a small fraction. For example, this same carrier has converted only a small fraction (1/30) of its special access circuits to EELs; another of Verizon's largest purchasers of special access services has not converted any of its circuits to EELs, nor have several other CLECs that use special access extensively. *See id.*

4. Entrance Facilities

The Commission has recognized that entrance facilities are particularly well suited to competitive supply, because they "often represent[] the point of greatest aggregation of traffic in a competing carrier's network, and such carriers are more likely to self-deploy these facilities because of the cost savings such aggregation permits." *Triennial Review Order* ¶ 367. The Commission also found that entrance facilities are "the most competitive type of transport;"

competitive deployment of these links is "pervasive;" and the price ILECs charge for these links "closely mirrors UNE rates." *Id.* ¶ 367 n.1122.

Verizon's data confirm these findings. These data show that competing providers have been steadily replacing entrance facilities they have obtained from Verizon with their own competitive transport. In 2003 alone, competing providers have performed such migrations for at least 20,000 entrance-facility circuits, and this trend continues. *See* Declaration of Mohit Patel ("Patel Decl.") ¶ 15 (Attachment 4). Verizon's data also show that, to the extent that competing providers continue to obtain entrance facilities from Verizon, they typically purchase special access rather than UNEs. Of the high-capacity entrance-facility circuits that carriers purchase from Verizon, approximately 96 percent are special access, while only 4 percent are UNEs. *See* Verses/Lataille/Jordan/Reney Decl. ¶ 52.

Finally, Verizon's data support the Commission's determination in the *Triennial Review Order* that it is inappropriate to require incumbent LECs to provide entrance facilities to competing carriers because "they are transmission facilities that exist *outside* the incumbent LEC's local network." *Triennial Review Order* ¶ 366 (emphasis in original). When a competitive carrier orders an entrance facility from Verizon, Verizon must design, engineer, and construct that facility to order. *See* Patel Decl. ¶ 6. Once the facility is constructed, it is dedicated to the use of the carrier that ordered it, and is not used by Verizon to provide service to its own end users. *See id.* ¶ 9.

Conclusion

In sum, the evidence demonstrates that, where demand for high-capacity service exists, competitive entry is possible without UNEs and, therefore, competitors are not impaired without unbundled access to high-capacity facilities. Competitors are capable of — and, indeed, are —

competing for high-capacity services using either their own facilities or a combination of competitive facilities and special access purchased from Verizon. Thus, the Commission may not impose unbundling obligations on high-capacity loops and transport as part of either interim or permanent rules.